

### REMARKS/ARGUMENTS

Applicants hereby request further examination and reconsideration of the application in view of the discussion below.

The examiner indicated that the present application includes claims directed to two patentably distinct inventions: (1) a suture and needle (claims 17-31, 34, 35 and 55-140), and (2) a method of suturing (claims 37-54).

The examiner also indicated that the application contains claims directed to the following patentably distinct species: (I) suture with twist cut multiple spiral barbs; (II) suture with overlapped barbs; (III) suture with staggered barbs; (IV) suture with random barbs; (V) suture with barbs in one direction; and (VI) suture with barbs in different directions. The examiner stated that the species are independent or distinct because they contain different structure and accompanying function.

Applicants elect the claims defining a suture and needle invention, including claims 17-31, 34, 35 and 55-140. The Applicants also elect species (I) a suture with twist cut multiple spiral barbs. Claims readable thereon include claims 17-20, 34, 55-66 and 79-84.

The election of invention and species is made with traverse. Applicants note that claims 37-54 directed to the second invention listed by the examiner for a method of suturing have already been withdrawn. Moreover, while the Applicants agree that the species listed by the examiner are patentably distinct, the traversal is on the basis that the Examiner has not demonstrated that the requirements for claim restriction have been met. In particular, it is stated in section 803 of the MPEP that two criteria for proper restriction of claims must be met: 1) The inventions must be independent and distinct as claimed, AND 2) there must be a serious burden on the examiner if restriction is required. The MPEP further states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."

Applicants note that the claims readable on the species in Groups I-VI were examined together and allowed by the examiner in co-pending U.S. Patent Application No. 10/065,280. Therefore, the claims of the six species designated by the examiner have already been examined together and have been allowed. Thus, Applicant believes that the examiner has not met the requirements of a *prima facie* showing of why search and examination of all of the claims of Groups I-VI, which have already been searched and examined, would pose a serious burden. Thus, Applicant respectfully requests that this election of species restriction be reconsidered and withdrawn.

If the examiner has any questions about the present Amendment or anticipates finally rejecting any claim of the present application, a telephone interview is requested.

The Commissioner is hereby authorized to charge payment of any additional filing or application fees associated with this communication or credit any overpayment to Deposit Account No. 13-4365.

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Respectfully submitted,

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